

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

CONSOLIDATED INDUSTRIES, LLC)	
d/b/a WEATHER KING PORTABLE)	
BUILDINGS,)	
)	
Plaintiff,)	
)	Civil Action No. 1:22-cv-01230-STA-jay
v.)	
)	Chief Judge S. Thomas Anderson
JESSE A. MAUPIN, BARRY D.)	
HARRELL, ADRIAN S. HARROD,)	
LOGAN C. FEAGIN, STEPHANIE L.)	
GILLESPIE, RYAN E. BROWN, DANIEL)	
J. HERSHBERGER, BRIAN L. LASSEN,)	
ALEYNA LASSEN, and AMERICAN)	
BARN CO., LLC,)	
)	
Defendants.)	

PLAINTIFF'S MOTION TO EXCLUDE CERTAIN OPINIONS OF ABCO
DEFENDANTS' EXPERT, BRIAN W. NAPPER

Pursuant to Fed. R. Evid. 702. as interpreted by *Daubert v. Merrell Dow Pharma., Inc.*, 509 U.S. 579 (1993), and its progeny, Plaintiff respectfully requests that the Court prevent defense expert Brian W. Napper from testifying to the jury that Plaintiff failed to mitigate its damages. As grounds for this motion, Plaintiff submits that Napper's opinions on this issue are irrelevant, he is unqualified to offer them, and his opinions are unreliable. In support of this motion, Defendants have filed herewith a memorandum of law as well as the following exhibits:

1. Expert Report of Brian W. Napper, dated May 7, 2025 (with only Appendix A included), filed herewith (under seal) as Exhibit 1;
2. Excerpts of the May 21, 2025 Deposition of Jill Coker, filed herewith as Exhibit 2;
3. Excerpts of Napper's June 10, 2025 deposition, filed herewith as Exhibit 3;

4. January 12, 2022 text message correspondence involving Defendant Jesse Maupin and Wade Etherton, filed herewith as Exhibit 4;
5. March 3, 2022 text message correspondence involving Maupin, Defendant Barry Harrell and Wade Etherton, filed herewith as Exhibit 5;
6. Excerpts of Maupin's January 14-15 deposition, filed herewith as Exhibit 6;
7. May 31, 2022 text message correspondence involving Maupin and Mark Lovell, filed herewith as Exhibit 7;
8. Defendant Brian Lassen's Response to Plaintiff's Second Set of Interrogatories, filed herewith as Exhibit 8; and
9. Excerpts of the May 15, 2025 Deposition of Defendant Ryan Brown, filed herewith as Exhibit 9.

Respectfully submitted,

/s/ David L. Johnson

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Attorneys for Plaintiff

CERTIFICATE OF COUNSEL

In accordance with Local Rule 7.2(a)(1)(B), I certify that I conferred with Attorney Thomas Pasternak via email on June 20, 2025, and that the motion is opposed due to lack of agreement.

/s/ David L. Johnson

David L. Johnson

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2025, I filed the foregoing Notice with the Court using the ECF system, which will provide notice and a copy to counsel of record:

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And to the following via U.S. Mail and email.

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/s/ David L. Johnson

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